FP 63, UM Agenda Date: 3/21/02
Agenda Item: 4E

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APR 04 2002
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STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

TELECOMMUNICATIONS

IN THE MATTER OF THE INVESTIGATION) REGARDING LOCAL EXCHANGE) COMPETITION FOR TELECOMMUNICA-) TIONS SERVICES)

ORDER APPROVING MODIFICATIONS TO THE REVISED GUIDELINES AND THE INCENTIVE PLAN
Docket No. TX95120631

IN THE MATTER OF THE BOARD'S) INVESTIGATION REGARDING THE) STATUS OF LOCAL EXCHANGE) COMPETITION IN NEW JERSEY)

Docket No. TX98010010

(SERVICE LIST ATTACHED)

BACKGROUND

By Consultative Report dated January 14, 2002, the Board of Public Utilities (Board) recommended to the Federal Communications Commission (FCC) that Verizon New Jersey Inc. (VNJ) be permitted to provide in-state interLATA telecommunications services subject to certain conditions. See I/M/O the Consultative Report on the Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey, Docket No. TO01090541 (January 14, 2002). A specific condition of the Board's support of VNJ's application was that VNJ file revisions to the billing metrics of the Carrier-to-Carrier Guidelines Performance Standards and Reports (Guidelines) which were adopted by the Board by Order dated June 10, 2001 (see Order Approving Guidelines, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket No. TX98010010 (June 10, 2001)), and revised by Order dated November 9, 2001 (see Order Approving Revised Guidelines, in these Dockets).

By letter dated January 18, 2002, VNJ filed the revised billing metrics for inclusion in the Guidelines and the associated Incentive Plan (IP). By Order dated January 10, 2002, the Board adopted an Incentive Plan applicable to VNJ's wholesale performance. See Order Approving Incentive Plan, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631 and I/M/O the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket No. TX98010010 (January 10, 2002)(hereinafter, IP Order).

Billing Metrics

By electronic mail dated January 23, 2002, Board Staff requested that all interested parties submit comments on the proposed billing metrics no later than February 1, 2002. By letters dated February 1, 2002, XO Communications (XO) and AT&T Communications of NJ, L.P. (AT&T) filed their respective comments. XO had no objection to the inclusion of the revised billing metrics. AT&T stated that the revisions to billing metrics BI-2 and BI-3 are consistent with the Board's findings in the Consultative Report. However, AT&T stated that an explanation is necessary regarding VNJ's revisions to BI-6, BI-7 and BI-8. In addition, AT&T noted several typographical errors within the revised Appendix A of the IP filed by VNJ.

VNJ, AT&T and Staff, in conference, agreed to a resolution of AT&T's concerns regarding VNJ's revisions to BI-6, BI-7 and BI-8 by removing the proposed footnotes associated with these metrics.

Incentive Plan Clarifications

Staff was notified by VNJ that the FCC has noticed an error in VNJ's November 2001 performance report which was filed on December 26, 2001. Accordingly, Staff undertook a review of the Incentive Plan approved by the Board by Order dated January 10, 2002 and concluded that certain clarifications and modifications to the IP are necessary with regard to (a) the calculation of incentive payments, (b) the schedule for bill payments and credits, and (c) the filing of revised performance reports.

A. Calculation of Incentive Payments Based on Comparison of Average Performance.

The approved VNJ IP includes a special methodology[1] (Appendix A to this Order) to be used to calculate incentive payments for metrics that measure averages. Step A requires the calculation separately of averages for Verizon NJ Retail transactions and CLEC transactions. Step B requires the calculation separately of the percentage of transactions above the average for Verizon NJ Retail and for the CLEC. Step C provides that no incentive payments are required if Verizon NJ's mean is greater than the CLEC's mean; if the CLEC's mean is greater than Verizon NJ's, the difference between the means is calculated. In Step D, the result in Step C is divided by the standard deviation of Verizon NJ. Step E requires multiplication of the result in Step D by the number of CLEC transactions to determine the number of transactions subject to incentive payments.

A problem with the methodology arises, however, because Steps C and D can result in a factor greater than 1 since it is possible for the difference in the averages to be greater that the standard deviation. More importantly, multiplication of the number of CLEC transactions by a number greater than 1 produces a number of transactions subject to incentive payments that is greater than the total number of CLEC transactions.

Therefore, Staff concluded that the IP should be modified to state that the calculation for these measures shall be limited to the actual number of transactions in that specific month. This would provide a more reasonable result than previously adopted.

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[1] This methodology is set forth on page 7 of the IP, as well as page 3 of Appendix B to the IP, both of which are attached to the Board's January 10, 2002 Order Approving Incentive Plan in these Dockets.

B. Schedule for Bill Credits and Payments

The IP requires payments to be made in the form of bill credits, with any excess in the credited amount over the billed amount to be paid by check. See the IP at 2. The IP requires credits to "appear on a CLEC's bill within one month after the performance is reported as being sub-par." Ibid. The IP further states: "[f]or example, for January performance reported on February 25, incentive credits will be processed in March and will appear on the CLEC's March bill." Ibid.

However, Staff has determined that the example in the Incentive Plan which requires incentive credits due to a CLEC to appear on a CLEC's bill within one month after the performance is reported as sub-par does not account for provisions of the Board's January 10, 2002 Order that require VNJ to file "detailed monthly reports and calculations utilized to determine the level of incentives ... within ten (10) business days from the filing of each month's performance report." IP Order at 23.

Therefore, Staff recommends that the Board clarify the example in the IP so that it is consistent with the provision in the Order. Staff believes that the following example, which it recommends be incorporated into the IP accurately illustrates the requirements of the IP:

> For example, for the January performance report released on February 25, the monthly IP reports and calculations required by the IP Order must be filed no later than March 11. Bill credits would appear on bills issued on the bill date following the filing of the monthly incentive plan reports and calculations, and continue to be reflected on remaining bill dates in the cycle until the billing cycle is completed.

Pursuant to this example, any credits due would appear on bills issued from March 11 through April 12, the close of the VNJ monthly billing cycle. By making this modification, the CLECs are assured of a reconciled account within a reasonable timeframe, and it permits VNJ to continue its current billing practice of issuing bills throughout the month.

C. Revised Performance Reports

Testimony given by VNJ's subject matter experts on performance measurements in the recent so-called "271 proceeding" underscored the fact that the IP adopted by the Board on October 12, 2001, contained no provision for the re-filing of corrected Performance Reports by a date certain[2]. In order to rectify this oversight, Staff has formulated modifications to be incorporated into the IP. These modifications are necessary to assure that the Board and competitors of VNJ receive accurate and timely performance reports on a going forward basis. It has been the experience of Staff since the adoption of the Guidelines in June 2000 that the reports issued to CLECs and the Board contain discrepancies. The overall intent of the Incentive Plan is to monitor VNJ's wholesale performance, and absent an accurate reporting of the monthly activities of VNJ, the Board is unable to determine the quality of service rendered to competitors. Credible records are essential to the Board's review process and are a requirement of the Board as articulated in the initial Order approving the Incentive Plan. See IP Order at 23. It is a paramount concern of this Board that VNJ be incented to produce reliable

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[2] See the November 5, 2001 testimony of Julie A. Canny and Marilyn C. DeVito on behalf of VNJ, p. 216, ll. 1-12 in I/M/O the Consultative Report on the Application of Verizon New Jersey Inc. for FCC Authorization to Provide In-Region, InterLATA Service in New Jersey, Docket No. TO01090541 (hereinafter, the NJ 271 Proceeding).

reports which contain accurate information. To ensure this will occur on a going-forward basis, Staff recommends that the Board adopt the following modifications to the Board's IP Order:

(1) VNJ shall continue to perform its quality assurance reviews of monthly performance reports and comply with existing change control notice procedures;

(2) once a report is submitted to a CLEC, the CLEC shall notify VNJ of any alleged discrepancies within forty-five (45) calendar days of receipt of each monthly report;

(3) sixty (60) calendar days after submission of each monthly report to the Board, an officer of Verizon New Jersey Inc. shall certify that VNJ has determined that either (a) no revisions to the monthly report are necessary or have been implemented, or (b) that revisions to the monthly report are necessary and have been or will be made. In the event that revisions to any monthly report are necessary more than sixty calendar days after its original filing, VNJ shall supplement this certification based on these revisions to the monthly report within fourteen (14) calendar days of determining the need for the revisions;

(4) in the event that revisions are necessary or have been implemented within sixty (60) calendar days after the initial submission of each monthly report to the Board, an officer of VNJ shall certify and submit to the Board, within fourteen (14) calendar days, the report revisions that have been implemented or that are scheduled for implementation along with a detailed description of the revisions.

(5) VNJ, included in the aforementioned certifications, shall address each discrepancy noted by a CLEC and supply a remediation plan, if necessary.

(6) If revisions have been made or are necessary, VNJ shall re-file and certify the corrected report within 120 calendar days from the date of original certification, which is 180 days from the initial filing of the monthly report. Incentive payments of $1,000.00 per calendar day shall be calculated from the original monthly report due date, i.e., the 25th of the month (or the next business day thereafter), until the corrected report is filed.

(7) If further revisions are necessary after the expiration of this 120 calendar day period, Verizon New Jersey's incentive calculation shall be as follows:

    (a) If re-filed within 181 - 270 calendar days of the initial filing of the report, a multiplier of 2x the $1,000.00 per calendar day incentive shall apply from the original due date of the monthly report.

    (b) If re-filed within 271- 360 calendar days of the initial filing of the report, a multiplier of 3x the $1000.00 per calendar day incentive shall apply from the original due date of the monthly report.

    (c) If re-filed after 360 calendar days of the initial filing of the report, a multiplier of 5x the $1000.00 per calendar day incentive shall apply from the original due date of the monthly report and a Board investigation shall commence to determine what remedial action, if any, is necessary.

Discussion

With regard to carrier-to-carrier guidelines and performance assurance plans, the FCC has stated the following:

> The fact that a [Bell Operating Company] will be subject to performance monitoring and enforcement mechanisms would constitute probative evidence that the BOC will continue to meet its section 271 obligations and that its entry [into in-region long distance service] would be consistent with the public interest.
>
> [Memorandum Opinion and Order, I/M/O Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, cc Docket No. 99-295, FCC 99-404 (December 22, 1999) (hereinafter, the New York 271 Order) at ¶ 429 (citation omitted)].

In support of its recent FCC petition for approval to provide long distance services in New Jersey, VNJ relied upon the Board's Revised Carrier-to-Carrier Guidelines and Incentive Plan to support its assertions that New Jersey's "extensive reporting requirements... allow competitors and regulators alike to identify and investigate potential problems before they pose a risk to competition," and its "self-executing performance assurance mechanism... provides still further incentives to provide the best wholesale performance possible." See VNJ's December 20, 2001 FCC Application for Authorization to Provide In-Region, InterLATA Services in New Jersey (cc Docket No. 01-347) at 99[3]. VNJ also told the FCC that New Jersey's Incentive Plan "provides 'strong assurance that the local market will remain open after [Verizon] receives section 271 authorization'" Id. at 102.

The Board, of course, is committed to eliminating all risks to competition, ensuring that CLECs receive high quality wholesale performance from VNJ, and that the local exchange telecommunications marketplace will remain fully open to competition after VNJ receives 271 approval from the FCC. The Board agrees fully with the FCC that carrier-to-carrier performance guidelines, accurate and timely performance reporting, and an adequate enforcement mechanism are essential to creating and maintaining a vibrant competitive local exchange marketplace.

The Board notes with approval the work of its Staff and the carriers in reaching a cooperative resolution of the issues related to billing metrics. The rationale for these revisions, as expressed in the Board's January 14, 2002 Consultative Report to the FCC, is the following:

> It is undisputed that electronic billing is an essential component of the billing process as established in the record. Without adequate electronic billing, CLECs may be unable to verify the accuracy of Verizon NJ's wholesale bills in a timely manner.
>
> ... It is important to the continued expansion of a robust competitive marketplace that Verizon provide reliable electronic bills to CLECs that buy its wholesale services in order to compete.

[3] This application was withdrawn by VNJ on March 19, 2002. See Order, I/M/O Application of Verizon New Jersey Inc., et al., for Authorization to Provide In-Region, InterLATA Services in New Jersey, cc Docket No. 01-347, DA 02-667 (March 20, 2002).

[Consultative Report of the New Jersey Board of Public Utilities, cc Docket No. 01-347 (January 14, 2002) at 40-41].

Accordingly, the Board HEREBY ADOPTS the billing metrics as modified by Staff, in cooperation with VNJ, AT&T and XO, to be incorporated within the Carrier-to-Carrier Guidelines and Incentive Plan effective in the February 2002 reporting cycle.

With regard to the proposed clarification of the matter for calculating incentive payments, the Board agrees that the calculation methodology originally set forth in the IP produces, in certain circumstances, anomalous and unintended results. The Board agrees that the Staff recommended modification would produce a more reasonable result, and is, therefore, an appropriate resolution of this problem.

With regard to the schedule for bill credits and payments, the Board agrees that the language in the IP is in conflict with the language in the IP Order, and clarification is necessary. The Board supports the Staff recommended modification to the example in the IP as a reasonable balance between the need of CLECs for reconciled account within a reasonable timeframe and the benefit to VNJ in maintaining its current billing practice. The proposed modification will clarify that CLEC bill credits and/or payments must appear on bills issued in the billing cycle following the filing of the monthly incentive plan reports and calculations by VNJ.

Finally, with regard to the filing of revised performance reports by VNJ, the Board notes that despite the current IP's requirement that, revised performance reports be refilled in a timely manner, the absence of a date certain for such re-filing has left an uncertainty as to the accuracy of VNJ's performance reports[4]. The Board noted in its Consultative Report that AT&T and WorldCom have criticized VNJ for failure to refile corrected performance reports. See Consultative Report at 79. In the Consultative Report, the Board also noted that, "[a]ccording to AT&T, the Board and CLECs have 'no meaningful opportunity to validate Verizon NJ's performance data.'" Ibid., citation omitted. The Board also noted WorldCom's complaint that "there have been no consequences from the Board for Verizon's failure to report on all metrics and to report them properly." Ibid.

Accordingly, the Board believes it is appropriate to clarify the IP's performance reporting requirements so as to underscore and reinforce the already stated requirement that VNJ revise and re-file performance reports "in a timely fashion." IP at 8. The Board agrees with Staff that specific reporting timeframes, as well as additional incentives, must be in place in order to assure CLECs and the Board that VNJ is aggressively reviewing its own reports and re-filing corrected reports in a responsible and timely manner[5]. A clarification of VNJ's wholesale performance reporting requirements coupled with incentives to ensure compliance with those requirements will promote the public interest in that it, along with the balance of the IP, as

[4] In the NJ 271 Proceeding, the VNJ measurements experts acknowledged that CLECs should "just take it on faith that if [performance reports] were corrected, Verizon's performance would not be materially different in the view reports as it was in the incorrect reports. "See the Canny/DeVito November 5, 2001 testimony in the NJ 271 Proceeding at 214-215.

[5]The Board notes that on March 21, 2002, subsequent to the Board's decision in this matter, VNJ electronically delivered to the Board and the CLEC community a change control notification (cc # CCNJ 2002-04033-ORD) to correct the reporting of the OR-2 Ordering metrics for all of the monthly performance reports from June 2000 through and including January 2002 IP.

modified herein, will "provide strong assurance that the local market will remain open after Bell Atlantic receives section 271 authorization." New York 271 Order at ¶ 429.

Accordingly, the Board HEREBY CLARIFIES the previously adopted Incentive Plan as follows:

a. Measures that utilize a methodology for incentive payments for metrics that measure averages are limited to payments no greater than the actual number of occurrences reported in that month.

b. Incentive Plan payments shall be credited beginning on the 11th business day following the filing of VNJ's monthly performance report and continue for a full billing cycle.

In addition, the Board HEREBY MODIFIES the previously adopted Incentive Plan to incorporate the following procedure for incomplete or revised reports or reports found to require revision[6]:

(1) VNJ shall continue to perform its quality assurance reviews of monthly performance reports and comply with existing change control notice procedures.

(2) Once a report is submitted to a CLEC, the CLEC shall notify Verizon New Jersey of any alleged discrepancies within forty-five (45) calendar days of receipt of each monthly report.

(3) Sixty (60) calendar days after submission of each monthly report to the Board, an officer of Verizon New Jersey Inc. shall certify that VNJ has determined that either (a) no revisions to the monthly report are necessary or have been implemented or (b) that revisions to the monthly report are necessary and have been or will be implemented. In the event that revisions to any monthly report are necessary more than sixty calendar days after its original filing, VNJ shall supplement this certification based on these revisions to the monthly report within fourteen (14) calendar days of determining the need for the revisions.

(4) In the event that revisions are necessary or have been implemented within sixty (60) calendar days after the initial submission of each monthly report to the Board, an officer of Verizon New Jersey shall certify and submit to the Board, within 14 calendar days, the revisions that have been implemented or that are scheduled for implementation, along with a detailed description of the revisions and their root cause.

(5) Included in the aforementioned certifications, VNJ shall address each discrepancy noted by the CLECs and supply a remediation plan, if necessary.

(6) If revisions have been made or are necessary, VNJ shall re-file and certify the corrected report within 120 calendar days from the original date of certification, which is 180 days from the initial filing of the monthly report. Incentives of

[6] The Board notes that as of the date of this Order, VNJ has filed its November 2001, December 2001, January 2002 and February 2002 performance reports. With regard to these specific reports, this provision shall become effective with the date of this Order, that is, no later than sixty (60) calendar days from the date of this Order, VNJ shall certify that these four (4) monthly performance reports are accurate or describe the revisions that have been made or are scheduled for implementation.

$1,000.00 per calendar day shall be calculated from the original due date, i.e., the 25th of the month or the next business day, until the corrected report is filed.

(7) If further revisions are necessary after the expiration of this 120 calendar day period, VNJ's incentive calculation shall be as follows:

(a) If re-filed within 181 - 270 calendar days after the initial filing of the report, a multiplier of 2x the $1,000.00 per calendar day incentive shall apply from the original due date of the monthly report.

(b) If re-filed within 271- 360 calendar days after the initial filing of the report, a multiplier of 3x the $1000.00 per calendar day incentive shall apply from the original due date of the monthly report.

(c) If re-filed after 360 calendar days after the initial filing of the report, a multiplier of 5x the $1000.00 per calendar day incentive shall apply from the original due date of the monthly report and a Board investigation shall commence to determine what remedial action, if any, is necessary.

Finally, the Board <u>DIRECTS</u> Staff to publish revised Carrier-to-Carrier Guidelines and a revised Incentive Plan, modified consistent with this Order, within 14 days from the date of this Order.

DATED: March 28, 2002

BOARD OF PUBLIC UTILITIES
BY:

JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

CAROL J. MURPHY
COMMISSIONER

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

REGINALD D. JOHNSON
ACTING SECRETARY

...EREBY CERTIFY that the within ...nt is a true copy of the original ...les of the Board of Public

BPU DOCKET NOS. TX95120631 & TX98010010

- For metrics that are an average or mean, the remedy shall be computed by determining the Z-Score. If the Z-Score, if greater than -1.645 - no remedy is required; if the Z-Score is equal to or less (farther from zero) than -1.645 the remedy will be calculated as follows:

A) Separately, determine the mean of VNJ's observations and the CLECs observations for the reporting period;

B) Separately, determine the percentage of occurrences above the mean for VNJ and the CLECs;

C) If VNJ's mean is greater than the CLECs mean, no remedy applies. If the CLECs mean is greater than VNJ's, calculate the difference between the means.

D) Divide this result by the standard deviation of VNJ;

E) Multiply this result by the number of CLEC occurrences;

F) Determine the level of severity by calculating the difference between the % of CLEC observations and the % of VNJ observations above the VNJ mean. Compare this result to the credit table for "All Percent Measures";

G) Multiply this result by the appropriate level of severity to determine the applicable remedy.

ILLUSTRATIVE EXAMPLE FOR THE FILING OF REVISED MONTHLY PERFORMANCE REPORTS

January 1 – January 31	Month to be reported.
February 25	Verizon New Jersey due date for release of January performance reports.
March 11	Due date for Verizon New Jersey to file Incentive Plan reports with each CLEC and the Board.
March 11 – April 10	Verizon New Jersey billing cycle in which bill credits, if any appear on CLECs bill.
April 11	Due date for CLECs to notify Verizon New Jersey of discrepancies in monthly performance reports.
April 25	Verizon New Jersey Officer certification that either (a) no revisions to the January report are necessary or (b) revision are necessary and have been or will be made.
May 9	Verizon New Jersey Officer certification that revisions have been made, including a statement of the root cause of the need for the revision or a detailed description of the revision to be made.
August 25	Due date for filing revised January performance report, which if filed on this date would require an incentive payment to the Board of $180,000.00.

NOTE: The term "due date" shall mean the last date for timely completion of the referenced action, and is not meant to preclude action at an earlier time.

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BPU Docket Nos. TX98010010 & TX95120631

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